

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 6, 2009 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 37-45 and 47-53 have been considered but are moot in view of the new ground(s) of rejection prompted by applicant's amendment to the claims.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 37-45 and 47-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Desai et al (U.S. Patent Application Publication No. 2003/0088228)

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

With respect to **claim 37**: Desai discloses an absorbent article 20, the absorbent article 20 comprising an elastic component, e.g. elasticized cuff region 12, the elastic component comprising a first substrate in the form of a web or laminate having an elastomeric composition applied either directly or indirectly via a printing method in a predetermined geometric pattern (0035,0036,0050), selected from the group consisting of rectilinear stripes (0037), said pattern comprising at least two individual elastomeric members differing in a property namely differing elasticity, i.e. differing mechanical properties between the elastomeric members (0032) and such that the elastomeric composition partially penetrates the first substrate (0039), wherein the elastomeric composition comprises a phase change solvent. The phase change solvent disclosed by Desai is identical to several solvents disclosed and claimed by applicant. The solvent of Desai is also disclosed in terms of parameters Q, L, R and R', R1, R2, R3, R4, x, y and n and has any of the recited general formulas or a mixture thereof, wherein alkyl from C1-C30; x is an integer, from 1 to 30; y is an integer from 1 to 30; and n is an integer from 1 to 7. (0042-0044)

With respect to **claim 38**: The elastic component disclosed by Desai has a percent set less than about 20%. (0047)

With respect to **claim 39**: The elastic component disclosed by Desai is a leg elastomeric member 12. (0035)

With respect to **claim 40**: Desai discloses that the predetermined geometric pattern is a continuous pattern or intermittent pattern. (0037)

With respect to **claim 41**: The elastomeric members disclosed by Desai have a width dimension of at least about 2.0 mm. (0033)

With respect to **claim 42**: The elastomeric members disclosed by Desai have a thickness dimension of at least about 0.1 mm. (0033)

With respect to **claim 43**: The elastomeric members disclosed by Desai are spaced apart from each other. (0037)

With respect to **claim 44**: The elastic component disclosed by Desai comprises at least one additional elastomeric composition disposed on the substrate inasmuch as Desai discloses that elastomeric composition can vary between elastomeric members 24. (0050)

With respect to **claim 45**: The elastic component disclosed by Desai comprises first and second elastomeric compositions and the second composition is disposed on the substrate in a pattern different than the first composition. (0036)

With respect to **claim 47**: The substrate disclosed by Desai is a nonwoven fibrous web. (0035)

With respect to **claim 48**: The fibers disclosed by Desai comprise a polyolefin material. (0038)

With respect to **claim 49**: The elastic component disclosed by Desai has been incrementally stretched. (0039)

With respect to **claim 50**: The elastic component disclosed by Desai further comprises a second substrate 36 joined to the first substrate 34 having the elastomeric composition printed thereon, to form a laminate, wherein the elastomeric composition is disposed between the first and second substrates. (0059)

With respect to **claim 51**: The second substrate disclosed by Desai comprises a film inasmuch as Desai defines substrate as referring to a film. (0025,0059)

With respect to **claim 52**: It is noted that the limitation of claim 52 constitutes product-by-process claim language that bears little patentable weight herein. Desai discloses that the printing method is gravure. (0050)

With respect to **claim 53**: The elastomeric member disclosed by Desai containing the elastomeric composition has a melt viscosity of from about 1 to about 150 Pa-s, measured at 175 °C and 1/s and an elasticity of at least about 50 N/m. (0039)

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/  
Primary Examiner, Art Unit 3761